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## Navigating The Turbulence: Rethinking Aircraft Lease Laws In India On Termination Of Aircraft Lease

*The judiciary often treats aircraft leases as conventional property leases, failing to recognize the unique nature of an aircraft as an asset. This oversight can lead to significant legal and financial complications*



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In the intricate tapestry of India's aviation sector, aircraft leasing emerges as a pivotal yet complex element. Predominantly, airline companies in India, constrained by financial limitations, opt for leasing aircraft rather than outright purchases. This arrangement, while practical, retains the ownership of the aircraft with the lessor, leaving the lessee - typically an airline - to utilize the aircraft for passenger and cargo transport within the country. However, this seemingly straightforward arrangement is now mired in legal and operational quandaries.

Recent disputes arising from Indian airlines' inability to meet lease obligations underscore a critical gap in the understanding and handling of aircraft leases. When these disputes reach the courts, a lack of specialized knowledge becomes apparent. The judiciary often treats these leases as conventional property leases, failing to recognize the unique nature of an aircraft as an asset. This oversight can lead to significant legal and financial complications.

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The crux of the issue lies in the treatment of the aircraft during legal disputes. Unlike immovable property, an aircraft's value and utility are intrinsically linked to its operational status. An aircraft grounded or seized, even under court orders, is not merely a static asset; it is a depreciating commodity, losing value and incurring costs with each day it remains unused. This situation is further exacerbated by the slow pace of court proceedings in India, leading to the deterioration of the aircraft and escalating costs for the lessor, who must bear the expenses of maintaining and parking the aircraft at Indian airports.

The current scenario poses a multifaceted challenge. On one hand, it inflates the economic burden of doing business for airlines, inevitably leading to increased costs for passengers. On the other, it deters new airlines from entering the Indian market, perceiving it as an unviable venture due to these entangled legal and operational risks.

In contrast, other countries have adopted more pragmatic regulations. These laws empower aircraft lessors with the right to repossess their assets promptly upon lease termination. Alternatively, they grant lessors access to the aircraft for maintenance purposes. Such measures not only prevent the devaluation of the aircraft but also alleviate the issue of congested airports and unnecessary expenditures.

In light of these international practices, India's approach to aircraft leasing requires a reevaluation. A potential solution could be the issuance of clear guidelines or notifications by the Director General of Civil Aviation. Even though, after termination of a lease, the interested party have some remedy before the DGCA and the Indian Courts, the exact remedy and way forward is still unclear. Such directives could offer much-needed clarity on the matter, aiding courts in making informed, expedited decisions in aircraft lease disputes.

Recently, after the landmark decision of the Go Airlines (India) Limited case, on 3 October 2023, the Ministry of Corporate Affairs, Government of India (MCA) issued a notification which is very beneficial to the Aviation industry, the notification states that the provisions of Section 14(1) will not be able to transactions, arrangements or agreements relating to aircraft, aircraft engines, airframes and helicopters i.e. when imposing a moratorium on insolvency proceedings, aircraft, engines, airframes and helicopters are not included.

The path forward demands a nuanced understanding of the unique dynamics of aircraft leasing. It's not just about legal interpretations but recognizing the economic and operational realities of the aviation industry. By aligning India's approach with global best practices, we can ensure a more efficient, economically viable, and legally sound framework for aircraft leasing, ultimately benefiting the entire aviation ecosystem, from airlines to passengers, and fostering a more conducive environment for new entrants in the skies above India.

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